IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL FIRST APPEAL NO.83/1989
(Smt. Geeta Devi Vs. State of Rajasthan & Others)

Date of order : 05.07.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

None present for the appellant.
Mr. O.P. Rathi, Addl. Govt. Advocate.

By way of filing the present first appeal under Section 96, C.P.C., the appellant has challenged the judgment and decree dated 22.12.1988 passed by Additional District Judge, Bhilwara in Civil Misc. Case No.23/84 (39/84) whereby the suit filed by the plaintiff-appellant was dismissed.

According to the facts of the case, a suit was filed by plaintiff-appellant challenging the assessment made by the Commercial Taxation Officer, Bhilwara on the ground that the said assessment made by the respondent No.2 was without jurisdiction. It was averred in the plaint that the plaintiff-appellant started a business in the name and style of Jegotia

Video Tea House on 21.6.1983 to serve tea to customers. On 4.7.1983, the Inspector of Commercial Taxes Department inspected the shop in question and and it has been said that the aim of the shop is to serve the tea to their customers and not to entertain the customers. On 6.7.1983, a notice was issued by the Commercial Taxation Officer, Bhilwara – respondent No.2 to plaintiff to attend his Office on 9.7.1983 for the purpose of assessment under Rajasthan (Entertainment & Advertisement) Tax Act, 1957 (hereafter referred to as "the Act of 1957 only"). A detailed reply was filed by the plaintiff-appellant before the respondent No.2 and it was submitted that shop is not covered under the Act of 1957, therefore, she is not liable for tax and assessment under the Act of 1957 and; therefore, the proceedings may be dropped. Further, it was averred in the plaint that the respondent No.2 without considering the reply in right perspective passed the assessment order and demanded Rs.2,920.80, Rs.6,875.10 and Rs.6,789.55 from the plaintiff-appellant while holding that shop is not covered under the Act of 1957. Therefore, it was averred in the suit by the plaintiff-appellant that the said assessment order was ab-initio wrong, illegal and without jurisdiction. It was further averred in the plaint that under the said demand the respondent No.2 forcibly took away the goods and now they are going to auction it. In these circumstances, a declaration was sought by way of filing suit with the

prayer that the assessment made by the respondent No.2 may be declared illegal and without jurisdiction and total demand of Rs.16,587.84 may be held to be not recoverable from the plaintiff-appellant.

In reply to the suit, the respondents contended before the trial court that the plaintiff's shop is covered under the Act of 1957, therefore, the assessment was rightly and legally made and the respondents have jurisdiction to assess the shop for the purpose of tax under the provisions of the Act of 1957. After filing reply, the learned trial court framed three issues, which are as follows :

> "1. Whether the order of the Commercial Taxes Officer is without jurisdiction and void ?
>
> 2. Whether this court has jurisdiction to hear the suit specially when there is a provision for appeal under Rajasthan Entertainment and Advertisement Tax Act, 1957.
>
> 3. Any other relief

After framing the issues as above, both the parties led their evidence and produced certain documents. After hearing both the parties, the learned trial Court dismissed the suit vide impugned judgment and decree dated 22.11.1988.

No one is present on behalf of the appellant.

However, as per the grounds taken in the appeal, the contention of the appellant is that the learned Additional District Judge has acted erroneously and illegally in dismissing the appellant's suit on the question of fact as well as law. It is further contended in the appeal that the learned trial court has misread the evidence led by the appellant and decided issue No.1 against the appellant. Further, it is contended in the appeal that the appellant has categorically proved that no tickets were issued for the purpose of showing the video films. It has been categorically proved that the shop was serving only tea to its customers and it was an open place and there was no shutter and, therefore, the finding given by the learned trial court is incorrect and wrong. According to the ground raised in the appeal, it is contended that the learned trial court has erred in coming to the conclusion that even in tea house if there is exhibition of video, it amounts to entertainment and as such covered under the Act of 1957, therefore, the learned trial court has erroneously gave finding. The appellant has also raised ground that without any cogent reasons, the issue No.1 was decided by the learned trial Court, therefore, the finding given by the learned trial court with regard to issue No.1 is totally contrary to the material on record. According to the appellant, under Section 5 (2) of the Act of 1957, the proprietor is the person from whom the tax

can be recovered. The respondent No.2 has attached the property which was not belonging to the appellant and this aspect of the matter was not considered in right perspective by the learned trial court. With regard to issue No.2 and 3, it is contended in the appeal that the said issues have been decided on the basis of decision of issue No.1.

While raising the above contentions in the appeal, it is prayed that the judgment and decree passed by learned Additional District Judge, Bhilwara may kindly be set aside and the appellant's suit may kindly be allowed with costs throughout.

After perusing the grounds taken in the appeal as well as hearing the arguments on behalf of the State and perusing the record of the case, it is obvious that all the three issues were decided by the learned trial Court against the plaintiff-appellant and it has been held that at the time of inspection by the respondent No.2, the appellant was exhibiting video films and he was charging three rupees from each customers but the learned trial Court while discussing entire evidence came to the conclusion that in the year 1983, the cost of one-cup tea was only fifty paisa and the plaintiff-appellant was charging three rupees from each spectators, who were siting inside the video-house. A categorical finding was given by the learned trial Court that in fact the said premises

where the inspection took place was video parlour and it was not a tea-shop. In my opinion, the fact which is admitted by the appellant that he was charging three rupees from each customers itself is sufficient to support the finding of the learned trial Court with regard to issue No.1. Therefore, the said business of the plaintiff-appellant of exhibiting cinema in video parlour falls under the provisions of the Act of 1957. Thus, on admitted position that plaintiff-appellant was running business of exhibiting cinema in the video parlour and was charging rupees three from each spectators, the finding given by the learned trial Court with regard to issue No.1 does not require any interference by this Court.

With regard to issue No.2, I see no reason to interfere with the finding given by learned trial court that there is a provision of appeal against the assessment order made by the Commercial Taxation Officer and with regard to issue No.1, learned trial Court has held that business of exhibiting cinema in the video parlour falls under the provisions of the Act of 1957 and tax is required to be levied from the plaintiff-appellant, therefore, the assessment was rightly made by the respondent No.2 and against that order there is statutory provision of appeal under the Act of 1957, therefore, the learned trial court has rightly held that against the order of assessment the appeal was to be filed and suit was not maintainable

against the assessment order made by the Commercial Taxation Officer. Likewise, issue No.3 has also been decided against the plaintiff-appellant that he is not entitled for any relief. I see no reason to interfere with the judgment under appeal passed by Additional District Judge, Bhilwara.

Consequently, the appeal is dismissed.

(GOPAL KRISHAN VYAS), J.

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